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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

11	NIIKO DAV'ON SMITH,)	No. ED CV 13-02330-JAK (VBK)
)	
12	Petitioner,)	ORDER FOR SUMMARY DISMISSAL
)	
13	v.)	
)	
14	R. J. GROUNDS,)	
)	
15	Respondent.)	
	_____)	

On December 18, 2013, Niiko Dav'on Smith (hereinafter referred to as "Petitioner") filed a "Petition for Writ of Habeas Corpus" in the United States District Court for the Central District of California.¹ Petitioner raised the following nine claims in his Petition which he labeled as Grounds Three through Eleven:

(3) In violation of Petitioner's federal rights under the Fifth Amendment, Petitioner was tried and convicted of aiding and abetting a principal;

(4) in violation of Petitioner's federal rights under the First

¹ On August 12, 2013, an "Order of Transfer" was issued by United States District Judge Richard Seeborg transferring the Petition from the United States District Court for the Northern District of California to the United States District Court for the Central District of California.

1 Amendment Petitioner was tried and convicted for associational
2 activities forbidden by California Penal Code § 186.22;

3 (5) In violation of Petitioner's federal rights under the Fifth
4 Amendment, Petitioner was interrogated while in custody by a method
5 that circumvented the holding of Miranda v. Arizona, 384 U.S. 1436
6 (1966);

7 (6) In violation of Petitioner's federal rights under the Fifth
8 Amendment, Petitioner was charged by information, rather than being
9 indicted or presented by a grand jury, despite the fact that the case
10 against Petitioner did not arise in the armed forces, and the crimes
11 were felonies;

12 (7) In violation of Petitioner's federal rights under the Seventh
13 and Fourteenth Amendments, the jury was not instructed that it could
14 not return a verdict against Petitioner if there was no evidence
15 against Petitioner on any accusation necessary to the charge[s];

16 (8) In violation of Petitioner's federal rights under the Fifth
17 and Fourteenth Amendments, the jury was not instructed that it could
18 not return a verdict against Petitioner if, with respect to any
19 accusation necessary to constitute a given charge, though as evidence
20 in Petitioner's favor;

21 (9) In violation of Petitioner's federal rights under the Sixth
22 and Fourteenth Amendments, the trial court's instructions to the jury
23 permitted the jury to give the State the benefit of the doubt and did
24 not deny it to Petitioner;

25 (10) In violation of Petitioner's federal rights under the Sixth
26 and Fourteenth Amendments, the jury, with permission of the trial
27 court, made several inferential conclusions that were unsupported by
28 the evidence;

1 (11) In violation of Petitioner's federal rights under the Sixth
2 and Fourteenth Amendments, California Penal Code § 31 was so vague
3 that Petitioner cannot reasonably anticipate the provision being
4 applied towards Petitioner's conduct, nor being properly applied by
5 the jury." (See Petition at pp. 7 and 8.)²

6 On December 23, 2013, the Court issued a Minute Order ordering
7 Petitioner to file a document with the Court indicating whether
8 Petitioner erroneously filed the within Petition in the United States
9 District Court rather than the California Supreme Court. It appeared
10 to the Court that the Petition was duplicative of the habeas petition
11 filed in Niiko Dav'on Smith v. Warden SVSP, Case No. ED CV 12-01453-
12 JAK (VBK). Petitioner was advised that, if he erroneously filed this
13 Petition in the United States District Court, he could request the
14 Court to dismiss the within Petition and proceed on Case No. ED CV 12-
15 01453-JAK (VBK).

16 On March 5, 2014, Petitioner filed "[Proposed} Petitioner's
17 Motion to Dismiss the Petition Case No. ED CV 13-02330-JAK (VBK) and
18 Thereafter Requesting the Court Grant the Petitioner's Motion to Stay
19 in Case No. ED CV 12-01453-JAK (VBK)."

20 Petitioner's habeas petition in Niiko Dav'on Smith v. Warden
21 SVSP, Case No. ED CV 12-01453-JAK (VBK) contains two exhausted claims
22 in Grounds One and Two. On June 4, 2013, Petitioner was granted a Stay
23 in Case No. ED CV 12-01453-JAK (VBK) pursuant to Kelly v. Small, 315
24 F.3d 1063 (9th Cir. 2003) in order to exhaust Grounds Three through
25 Eleven. Petitioner currently has a habeas petition pending in the

26
27 ² The Court notes that the Petition was on a form utilized by
28 the California State Courts. The Petition contained Claims Three
through Eleven of the Petition filed in Case No. ED CV 12-01453-JAK
(VBK).

1 California Supreme Court containing the claims in Grounds Three
2 through Eleven.

3 As noted above, Petitioner requests that the Petition in Case No.
4 ED CV 13-02330-JAK (VBK) be voluntarily dismissed.

5 Pursuant to Fed.R.Civ.P. 41(a)(1), Petitioner's Petition is
6 hereby dismissed.

7 **IT IS THEREFORE ORDERED** that the Petition is hereby dismissed
8 without prejudice.

9
10 DATED: March 25, 2014



JOHN A. KRONSTADT
UNITED STATES DISTRICT JUDGE

11
12
13 Presented on
14 March 25, 2014 by:

15
16 /s/
VICTOR B. KENTON
UNITED STATES MAGISTRATE JUDGE